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June 14, 2010

TO BE FILED UNDER SEAL

The Honorable I. Leo Glasser
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Felix Sater, 98 CR 1101 (ILG)

Dear Judge Glasser:

We represent the movant Felix Sater in this matter. In a letter dated June 11, 2010, counsel for Respondent Fred Oberlander appears to be making an application to (1) have Mr. Oberlander show his own counsel the documents that are the subject of the Order to Show Cause and (2) obtain a copy of the order which sealed the entire file of the matter captioned 98 CR 1101 (ILG).

We are surprised to learn that, having represented Mr. Oberlander in connection with the present Order to Show Cause for nearly three weeks, counsel for Mr. Oberlander are just now requesting the Court's permission to review the documents that are central to the issue before the Court. While we do not object to their review of the materials, we assume that knowing as they do that the documents are sensitive and sealed, they will act responsibly in handling those documents, including not disseminating them or the information contained therein any further, securing copies under lock and key, and following the Court's direction relating to the return or destruction of any copies at the conclusion of this matter. Finally, to the extent they have questions or concerns, we have always been and remain available to discuss any issues.

We view the additional request for an opportunity to review the actual sealing order "to ascertain which terms of the order Mr. Oberlander is alleged to have violated," as meritless and another stalling tactic. Respondent Oberlander admits in the SDNY Complaint and in his opposition to the present motion that he knew the documents were sealed. On the second page of the PSR – which he allegedly read with "utmost care" – it clearly states: "It is the policy of the federal judiciary and the Department of Justice that further redisclosure of the presentence investigation report is prohibited without the consent of the sentencing judge." The documents are sealed and

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the Respondents admit knowing they were sealed. Under these circumstances, the precise language of the sealing order is completely irrelevant to the present inquiry. Moreover, having not seen the order ourselves, we have concerns that it may contain additional sensitive information relating to the reasons for sealing the file to which the Respondents should not be given access.

Finally, we disagree with Respondents' interpretation of *United States v. Charmer Industries*, 711 F.2d 1164 (1983). In *Charmer*, the Arizona Assistant Attorney General openly requested and obtained the PSR from the Probation Office, then contacted the U.S. Attorney's Office to obtain permission to use the PSR, and then, upon an application by the Probation Department, the sentencing judge approved the release of the PSR to be used by the Arizona Attorney General. Despite all of those good faith efforts to obtain proper authorization to use the report, the Second Circuit still ordered an entry of an injunction requiring the Arizona AG to return the PSR (and all copies and extracts made of it) to the court and prohibiting the publication or other use of any portion of the report because there was inadequate justification for the release of the PSR.

The facts of this case are dramatically different. With full knowledge of the sealed and sensitive nature of the PSR, the Respondents – including Oberlander, who is an officer of the Court – made no effort to contact the probation department, the Court, or the U.S. Attorney's Office to seek permission to use it. The policy considerations relating to "safeguarding the confidentiality of presentence reports and for disclosing them to third parties only when justice demands" that were present in *Charmer*, where an arm of the court made an innocent unauthorized disclosure, are far more compelling here, where the Respondents had every reason to believe that the documents were stolen and no reason to believe that the Respondents were authorized to use them.

To the extent it is not already covered by our initial application, we further move the Court for an order directing the identification of any other documents in the Respondents' possession that are part of or relate to the sealed file in the above-captioned case.

Respectfully,



Kelly A. Moore

cc: Richard E. Lerner, Esq. (by E-Mail)
Stamatis Stamoulis, Esq. (by E-Mail)
Todd Kaminsky, Assistant United States Attorney (by E-Mail)

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